NEW AMERICA
FOUNDATION

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1990 K Street NW, Room 8037
Washington, DC 20006-8502

RE: Comments on Notice of Proposed Rulemaking on Gainful Employment
Docket ID: ED-2014-OPE-0039

Dear Ms. Higgins,

Thank you for the opportunity to submit comments on the Notice of Proposed Rulemaking for defining what it means to provide gainful employment in a recognized occupation. There is a clear and compelling need for a rule that identifies and holds accountable the poorest-performing programs in the career training space and provides strong incentives for continuous improvement throughout this part of the higher education sector. Absent such accountability, too many students in this space are taking on high levels of debt relative to extremely low wages that barely tread water over the poverty line or facing repayment burdens that put them behind a seemingly insurmountable financial 8-ball at the hands of U.S. taxpayers. And as the federal agency that is tasked with overseeing the very programs that are leading large numbers of students into this situation, it is incumbent upon the U.S. Department of Education to not allow tools for opportunity to become engines of debt and financial calamity for our nation's most vulnerable students.

Thank you for your consideration.

Ben Miller
New America Foundation

The comments are structured as follows. They begin with a consideration of the overall need for a strong gainful employment regulation. They then touch on specific issues within the suggested regulatory text, noting where applicable the need for modifications or preservation of existing elements. Here is a list of the different provisions discussed:

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Credentialing and gainful employment

The gainful employment rule is attempting to address several different problems with career training that have different sources but manifest in a similar set of results: students with too much debt, insufficient earnings, and/or an inability to obtain employment in their field. Because the reasons for why programs end up in this position are varied, the rule correctly takes the course of focusing on easily measurable outcomes with a little bit of commonsense upfront due diligence. This combination ensures that programs and institutions have the flexibility to find different ways to succeed without too much governmental interference, while also adding a level of front-end protection that would stop the most obvious instances of programs that are destined for failure. Establishing this missing feedback loop between student results and program accountability also creates opportunities for improving consumer decision-making.

While many of the problems in gainful employment are well-documented, there is one issue that often escapes notice and is important for understanding why many of the problems related to debt and cost occur: insufficient incentives for proper credentialing.

The past decade-plus has seen significant increases in the number of certificate programs, many of which bill themselves as connected to in-demand occupations. But almost none of these problematic programs add the second important modifier: low-wage. These are programs for which even successful graduates are likely facing a level of earnings that hovers around subsistence in a career field with little if any room for upward advancement. It should be questionable whether some of these certificates can even be properly considered postsecondary, as their expected returns are so low that it's unrealistic to expect graduates to be able to handle any regular student debt payments, to say nothing of what happens for dropouts.

Data on graduates of gainful employment programs in 2008 and 2009 and borrowers who entered repayment in 2009 released by the Department of Education indicate just how problematic the lack of these feedback mechanisms has been by hundreds of thousands of students, particularly for those who attended for-profit institutions.

According to these data, there are just over 4,500 programs where median annual debt payments were greater than $0. Of those, more than one-third (1,643 out of 4,540) had typical earnings for graduates that were less than 150 percent of the poverty level for a single person, or about $17,235. Because these earnings represent that higher of the mean or median, that means *at best* half the graduates from these programs are not even earning enough money to cover basic expenses, to say nothing of making enough to pay down their debts or accumulate wealth for the purposes of intergenerational economic mobility.

A closer look at the data shows that certificate programs are the most likely credential level to see problems with low earnings. For example, the average earnings for certificate completers weighted by the number of completers in a program was just $17,309 for those who attended a private for-profit institution.[1] In 2011 (the year used for earnings measurement), someone with that salary would be about $1,000 above 150 percent of the poverty level for a single person and underneath it if they had more than one person in their household. Someone at that level with student loan debt likely would make minimal payments at best under income-based repayment, since their adjusted gross income minus 150 percent of the poverty level would be close to $0 if not below.

At the same time, graduates from certificate programs at public colleges do much better. At $31,501, their completer-weighted earnings are nearly double those of graduates from for-profit colleges.[2]

The credentialing options offered are a big reason for such earnings disparities. The two largest certificate programs offered by for-profit colleges are in medical assisting (weighted average earnings $15,308) and cosmetology ($12,272). Those two program types alone count for nearly one-third of the

[1] http://www.edcentral.org/washington-post-gainful-employment-fact-check/
[2] http://www.edcentral.org/washington-post-gainful-employment-fact-check/

certificate completers at for-profit colleges in the data. By contrast, 58 percent of certificate completers at public colleges attended licensed vocational/practical nursing (LPN) programs. Despite being at most a few months longer, these LPN programs had weighted typical earnings of $35,025.

The comparison between LPN and medical assisting programs illustrate how choices about what to offer students can lead to wildly different earnings results. Both LPN and medical assisting programs are typically offered as certificates lasting one year or less, with the latter being more likely to be under a year. Medical assistants are not a profession licensed by states or other government entities, though there are different certifications available that might be of interest to employers. In many instances the medical assistant may not be able to work in healthcare facilities, such as hospitals. They are instead employed in doctor's offices performing simple administrative duties, such as patient intake and insurance billing, though some may add on basic clinical functions like diagnostic tests or explaining medications. The Bureau of Labor Statistics (BLS) reports that the median wage for a medical assistant is $29,370, a figure which includes individuals at all stages of their careers.[3]

An LPN certificate is a path into a regulated profession. Unlike medical assistants, LVNs must pass a licensing exam in order to operate, but attaining that licensure allows them to work in health care facilities such as hospitals, as well as doctor's offices. They can also perform more involved clinical duties, including starting intravenous drips in some states.[4] And though they may only need to complete at most a few months more education than a medical assistant, the BLS estimates that the median salary for an LVN is $41,540—roughly the same as the 90th percentile earnings for a medical assistant.[5]

Even though LVN programs appear to be a much better bet than medical assisting, it's the latter set of programs that's exploding. In 2000, U.S. colleges and universities awarded about 34,000 certificates each in medical assisting and LVN. By 2012, the number of medical assisting certificates exploded to over 100,000, while LVN grew to just 50,000. And medical assisting is dominated by private for-profit colleges. In the 2011-12 academic year, for-profits awarded 88 percent of all medical assisting certificates, while public colleges accounted for 71 percent of LVN certificates.

Faced with similar options, the explosive growth followed the path of least resistance into programs with much worse expected earnings and less state oversight.

Choices about the types of programs to grow or offer matter because students' college decisions are not just about whether or not to go at all, but also what to study. The earnings discussed above are for program graduates, students who showed an ability to navigate a course of study. But it's entirely possible they could have chosen a different certificate that for a comparable time investment has a much greater payoff. Such within-college choices are particularly important for older or working students, who due to time commitments may only be able to swing one shot at going to college. Having that sole chance be at a program that gives them fewer workforce options than others is effectively a lost opportunity that cannot be reclaimed.

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[3] http://www.bls.gov/ooh/healthcare/medical-assistants.htm
[4] http://work.chron.com/difference-between-licensed-vocational-nurse-certified-medical-assistant-9587.html
[5] http://www.bls.gov/ooh/healthcare/licensed-practical-and-licensed-vocational-nurses.htm

It’s unrealistic to expect a student to be consistently able to determine each and every differences in program options and where similar sounding options might actually lead. Rather, what’s needed is an accountability system that also orients incentives in the right direction, driving growth toward high-wage occupations and not just those that can be offered quickly and at lower cost, regardless of how good a return they are likely to produce.

Specific improvements to the rule

In general, the regulatory text included in the NPRM is a better version of the rule than was published in July of 2011. But there are several areas where a few additional alterations would be welcome to properly balance the need for accountability and simplicity. There are also some areas of particular importance to retain in thinking about possible other changes to the rule. Where possible the applicable regulatory section is noted, though comments are organized in order of importance, not section number.

668.403—Gainful Employment Program Framework

Address the low income problem

In physics, rules that apply to larger bodies fall apart when moving down to nanoscopic levels. The gainful employment framework suffers from a similar issue. If left unfixed, it could counterintuitively make it easier for programs with extremely low earnings returns to pass than programs with equivalent percentage results but better incomes. The result could be a significant number of programs deemed to be providing gainful employment in a recognized occupation while the federal government and taxpayers forgive every last dollar lent plus interest.

The low-income problem arises due to the interaction between the equal treatment of the two debt-to-earnings rates and the presence of a program cohort default rate instead of a repayment rate. The result is that a program with earnings so low that it has no discretionary income has an easier path to passing the metrics by keeping its annual debt-to-earnings rate within acceptable bounds and sending all borrowers into income-based repayment.

The proposed rule treats annual and discretionary debt-to-earnings results as equivalent, meaning a program only has to pass one in order to pass this portion of the accountability framework. But allowing programs to pass solely based on the annual debt-to-earnings measure makes it possible for a program with sub-poverty wages to still avoid failing the metrics. For those borrowers, the metrics effectively state that it’s acceptable for graduates to contribute dollars needed for necessities should go to loan payments. Take for example the medical secretary certificate offered by Everest College in Portland, which passes the annual debt-to-earnings rate at 7.75 percent. But graduates from this program earned just $14,595—less than the annual income for a worker who earns minimum wage. These graduates are effectively impoverished. They likely have no discretionary income and in fact fail the discretionary debt-to-earnings test miserably.

The notion that it's acceptable for poverty level workers to be making payments on their student loans actually runs counter to both the way Congress thinks about the program as well as other researchers. For example, Sandy Baum and Saul Schwartz in "How Much Debt is Too Much: Defining Benchmarks for Manageable Student Debt," conclude:

> Borrowers with pre-tax incomes less than half the median ($37,543 for full-time workers 25 and older in 2004 in the U.S.) should not be expected to make loan payments.[6]

What Baum and Schwartz recognize is that manageable student loan repayment is not a linear function. Rather, there's a level of income where the entire system falls apart due to the need to cover essential expenses. Simply put, <u>there is some level of income so low that any positive debt-to-earnings rate should be considered unacceptable.</u> Programs in this situation need their own set of rules because the general framework does not work for them. A discretionary debt-to-earnings rate understands this concept, but the annual one does not.

The logical response to this concern is to point to the program cohort default rate as the bulwark against allowing low-income programs to pass. After all, if borrowers are very low income they are unlikely to be able to afford their debt payments and end up in default. But the presence of income-based repayment makes the cohort default rate ill-suited to serving this purpose.

As set by Congress, students can benefit from income-based payment plans if they have a partial financial hardship, which is defined as having loan payments exceed 15 or 10 percent of discretionary income, depending on when a borrower entered repayment. For higher income borrowers, this means they would see a monthly payment reduction. But lower-income people could see their payments get eliminated. That's because the partial financial hardship calculation first deducts 150 percent of the poverty level based on household size from a borrower's adjusted gross income and then uses 10 or 15 percent of the remaining amount to calculate loan payments. Those deductions establish an effective income floor of about $17,700 for a single person and $24,000 for a two-person household before they would be expected to make a payment.

The combination of income-based repayment and low-income borrowers produces a clear path for gutting the effectiveness of the cohort default rate and potentially the entire gainful employment system. To see why, return to the Everest medical secretary program. It passes the annual debt-to-earnings test despite very low incomes for graduates. But at least half its graduates could almost certainly have a $0 payment on income-based repayment because they have no discretionary income to put toward loan payments.[7] In that case, all the institution has to do is ensure it keeps the annual debt-to-earnings rate manageable. If it can do that, then borrowers could be easily flipped into income-based

[6] http://www.cgsnet.org/ckfinder/userfiles/files/How_Much_Debt_is_Too_Much.pdf page 25.

[7] At least half, since the mean or median is at this level. The exact percent might vary depending on the borrowing rate and the distribution of income.

repayment, where they will not owe a single dollar, making default impossible. And should they stay low income for their entire loan term, the entire balance plus interest would be forgiven by the federal government. In this scenario, that program is not providing gainful employment. It is indebting impoverished graduates and successfully navigating safety net borrower options to avoid accountability.

By contrast, consider Everest's master's program in business administration. It too barely passes the annual debt-to-earnings rate with a figure of 7.99 percent. But it has annual earnings of $42,081. Despite substantially higher earnings than the medical secretary program, it will have a tougher time using income-based repayment to avoid problems on the cohort default rate. That's because its borrowers likely earn enough money that even those with a partial financial hardship will still have to pay something on their loans, making repayment less passive.

Three ways to solve the low-income problem

The problem of low earnings programs arises because the proposed gainful employment framework only focuses on relative results, not absolute figures. Fortunately, there are three possible solutions to this problem.

Option 1: Require passage of the discretionary debt-to-earnings rate

The simplest solution to the problem would be to make the discretionary debt-to-earnings rate the primary requirement for passage. Doing so would recognize that programs that with an acceptably low annual debt-to-earnings rate but poor earnings should not be considered passing. It sends a strong message that postsecondary programs should be expected to generate an earnings premium for graduates that afford them the ability to engage in discretionary consumption and it is from that discretionary consumption that they can make payments on their student loans.

Requiring passage of the discretionary debt-to-earnings rate would admittedly result in a stronger standard for programs. That's because 3,048 of the 4,540 programs with earnings information and some annual debt payments in the latest data release fail to meet the discretionary debt-to-earnings standard of 20 percent, a failure rate of approximately 67 percent. But that's because more than half of programs that fail the discretionary debt-to-earnings test (1,643 or 53 percent) have earnings so low that they do not earn even have a single dollar in discretionary income.

Option 2: Replace the program cohort default rate with an amortization test

While the issue of low-earnings programs passing the debt-to-earnings test is not ideal, it really becomes a problem due to the interaction between income-based payment plans and cohort default rates. A repayment rate would not suffer from these issues because borrowers benefiting from a $0 payment on income-based repayment would not help a program's results on the metric.

Clearly the repayment rate is a fraught metric with an unfortunate history in this process. But that's due to the focus on the measure as capturing individual results and setting a standard for the percentage of individuals that should be successfully repaying their loans. While that may be a useful way to think of a repayment rate for consumer disclosure purposes, the Department should approach the repayment rate through the eyes of its function as a lender.

What lenders ultimately care about is amortization—are loans being retired as per the agreed upon terms and conditions. So a lender-focused repayment rate would thus consider the repayment rate as a measure of the amortization of the entire pool of loans it made to borrowers at a program, hereafter referred to as an amortization rate. For a given dollar amount of loans and a known interest rate, it is very easy to calculate how much of that balance should be remaining at any stated point in time. The Department could then compare the actual amount remaining at that point in time to the expected balance on an amortization table. Programs where the balance is at or below the expected level would pass on the grounds that borrowers are paying down their loans at least as fast as expected. Those with balances above expected levels would fail on the grounds that borrowers are not paying down their loans fast enough to retire their debt in a meaningful timeframe.

This option is noticeably different from the repayment rate suggested by the Department in the second negotiation session. That measure looked at whether the total outstanding amount of loans decreased by at least $1 year over year. But such a measure is not necessarily fair to schools, since borrowers may make a great deal of pre-payments in one year, resulting in a lower balance that might be harder to pay down further.

At the same time, this amortization rate benefits from not requiring making value calls about the acceptable level of individual performance that necessitates passage or failure. Instead, it views a program's pooled loans from a lender's perspective and asks whether the entire set is being repaid at an acceptable rate or not.

This option address the cohort default rate problem and IBR problem because borrowers with very low income making $0 or low loan payments would hurt the amortization rate by growing the total outstanding loan balance for the program. But the test would also say it's not acceptable for an entire pool of loans to be paid down too slowly.

Of course, such an amortization rate does require making judgments about the acceptable time for paying off loans. Fortunately, there are two logical standards to choose from here. The first and laxest would be to test whether loans are being retired on a 20-year amortization schedule. The reason for 20 years is that payment schedules longer than that could result in amounts forgiven under income-based repayment. This test simply asks that borrowers as a whole repay their loans fast enough that it does not look like the Department will have to forgive some or all of the balance through an income-based payment plan. Note this does not preclude some borrowers from using such plans if they need it. In those cases, other borrowers would simply have to be making greater payments to make up for those that are paying less or negatively amortizing on their loans. Rather, it asks that the entire pool of loans not look like it is headed for forgiveness. This balances the need for income-based repayment as a safety net, while also saying that complete utilization of the program is not acceptable.

The other logical set of thresholds would be borrowed from the debt-to-earnings rates. The Department is already proposing a repayment schedule of 10, 15, or 20 years based upon the credential type as a way of calculating likely annual student loan payments. This option would simply borrow those same figures to test whether the cumulative loan amounts are being repaid over that same time. So in this case, a certificate program would have to show its amount outstanding at the end of three fiscal years is equal to or less than the amount that should be outstanding at that point in time if the loans were going to be completely retired by the end of 10 years, while a bachelor's degree program would have to do the same thing but for a 15-year repayment schedule. This option thus has the built in acknowledgement that different program types generate differing levels of debt that may take more or less time to repay.

Option 3: Adopt a minimum earnings level for programs with any expected debt payments

The big reason why the gainful employment framework is ineffective with lower-earnings programs is because there's no acknowledgement that at some point incomes get so low that any debt payments should be considered unacceptable. This option would fix that problem by stating that any program with typical earnings below a certain level and debt payments greater than $0 would automatically fail the debt-to-earnings tests. It is in effect a requirement of generating some level of a non-infinite discretionary debt-to-earnings rate.

The way it would work is that programs would still have to pass either the annual or discretionary debt-to-earnings tests. But they would also have to show that the earnings level observed exceed at least a minimum threshold. The recommended one to use would be 150 percent of the poverty level for a single person. Graduates with earnings at or above that level are more likely to at least make some payments on their student loans through income-based repayment plans—removing that potential loophole. It also lines up with what's considered minimum income for discretionary purposes on the second debt-to-earnings test. Note that this would not require a program to pass that discretionary debt-to-earnings test. Rather, it would simply require showing that there is at least some degree of discretionary earnings.

An important feature of this option is that it would only apply to programs that had some amount of debt in the numerator of a debt-to-earnings rate. The rationale is that as noted by Baum and Schwartz, very low income people should not be diverting any of their earnings to loan payments. Programs with low incomes and debt payments of $0 are not ideal, but do not suffer from this concern and thus should still pass.

If enacted, this requirement would affect an estimated 1,101 programs that currently have annual debt-to-earnings rates of 8 percent or less, annual debt payments greater than $0 and no discretionary income.

Keep metrics independent of each other

The 2011 final rule required programs to fail each and every measure in order to be considered a failing program. Though more lenient, this requirement flew in the face of logic about evaluating program quality. That's why the current proposed framework is an improvement by not allowing a program with poor performance on one set of metrics to be absolved by results on another. This is a very important feature of the system and one that should be preserved.

As noted in the NPRM, the two accountability metrics aim to judge different aspects of a program. The debt-to-earnings rates are a test of whether students who did everything expected of them and graduated are earning enough money to justify their debt investment. By contrast, the program cohort default rate looks at whether all federal loan borrowers—dropouts and graduates—are able to avoid the worst possible outcome on their student loans.

Combining these two measures to allow passage of either to guarantee passage would send an odd policy message. For example, programs that fail the program cohort default rate but pass the debt-to-earnings rate, strongly suggest they are a “lottery ticket” option—graduates may have an acceptable debt burden, but borrowers overall are struggling to repay their debts and ending up in trouble. The exact reason for this may not be clear, but given the importance of program completion in student default, it could very well be a function of a very low completion rate.

Alternatively, a program with an acceptable cohort default rate and a poor debt-to-earnings rate could be a reflection of the ability of borrowers and institutions to use income-based payment plans to keep payments reasonable or perhaps even the low-income problem identified above.

Keeping the measures separate and requiring independent passage of each shows that programs must achieve two complementary but separate aims: (1) ensure graduates are not overly indebted and (2) all borrowers who cycle through a program should not be at high risk for the worst possible loan outcome. Because one measure focuses solely on graduates and the other solely on borrowers, a passage of either or requirement would raise questions about why it’s acceptable to prioritize one group of students over the other.

A passage of only either metric to pass could also encourage gaming efforts that would undercut the intention of the rule. For example, an institution could decide to charge all students more money and use the excess revenue to pay down the debts only of students who graduate through retroactive scholarships, making them pass the debt-to-earnings rate. This could potentially exacerbate the economic situation of dropouts, who would have even more debt, but it would not matter if lots of them default. Given that we know how college dropouts already fare much worse than graduates, any scenario that encourages a prioritization of one over the other could ultimately result in worse outcomes for most students while a select group looks better for the purposes of one accountability test.

Correlation between metrics

Some groups are arguing about the validity of the different debt metrics because there is not a lot of overlap in terms of who fails one versus the other. But two things must be kept in mind. First, the two metrics are not measuring identical groups of students. The debt-to-earnings rates are a reflection of all Title-IV aided graduates. The program cohort default rate is a measure of all federal student loan borrowers. As a result, one would certainly expect that a program with a very high dropout rate to possibly exhibit different results, since those who persevere through to graduation are likely signaling another set of abilities to make it through academic dysfunction that would likely pay off in the job market as well. It’s the same phenomenon that indicates why students who successfully transfer from a two-year school to a four-year school earn bachelor's degrees at slightly higher rates than homegrown four-year students—they've demonstrated the ability to successfully navigate a process that weeds out all but the best along the way.

Second, program cohort default rates are not a true measure of student loan success. Rather, they are a measure of solely the most catastrophic student loan outcome that ignores any negative outcomes that are not actual default. This means cohort default rates can be more easily altered by institutions in a way that changes results without actual improvement in student repayment. Since only default matters, things like income-based repayment, deferment, and forbearance can be employed to keep a cohort default rate low even if the borrower is not in a situation to retire his or her debt. Therefore, a program with a poor debt-to-earnings rate and a good cohort default rate could simply be employing tools to avoid default and that a true measure of loan success would show a greater degree of alignment.

Maintain the middle performance zone

The 2011 final rule ultimately adopted a failing debt-to-earnings rate of 12 percent.[8] The logic for the 12 percent figure was that it represented 150 percent of the maximum recommended level of 8 percent. The final selection of 12 percent came after discarding a concept of a middle performance tier in the NPRM—a provision identical to the "zone" in this current NPRM.

The zone represents a tougher standard because it requires programs to ultimately meet an 8 percent debt-to-earnings rate at least once in a four-year period. But including this middle zone better connects the rule to existing research and reasoned bases than one that does not include it. Therefore, it is extremely important that the middle zone be preserved in a final rule.

The middle zone sends an important policy message

A single threshold accountability system for debt-to-earnings rates sends a message that the Department is only interested in holding accountable the absolute worst performers for providing gainful employment in a recognized occupation. But this means that programs whose results are not egregiously bad but still are higher than acceptable have minimal incentive to improve. The goals of the regulation in driving continuous improvement are thus lessened. By contrast, the adoption of a middle zone sends a more positive message of the need for more programs to constantly strive for doing a better job for their students. Providing multiple years to get there gives programs time to make adjustments to get there, while still focusing on those who are objectively seen as poor performers.

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[8] This discussion excludes the discretionary debt-to-earnings rate because functionally no programs pass that standard but fail the annual debt-to-earnings test, while many programs pass only the annual test. As a result, the requirement to pass only one of the two debt-to-earnings tests is a de facto test solely of annual debt-to-earnings rates.

8 percent has a greater research base than 12 percent

Researchers of various types have discussed the idea of 8 percent being the maximum percentage of income that should be devoted to debt service on student loans. Though it is not clear who first identified that percentage, it goes back to at least 1998 and is repeatedly presented as the common standard employed by lender underwriting. The suggested 12 percent standard for failure is directly linked to that 8 percent standard because it does not have its own empirical basis, but is rather a 150 percent inflation of a standard that has been studied.

Not including the studied number in the regulatory scheme in the form of the zone threshold could thus potentially weaken the accountability framework's connection back to the underlying research. By setting the ultimate threshold at the studied number, the Department can then justify the 150 percent inflation of that number for the failing standard as choosing a level so above and beyond maximum acceptable levels that achieving that result cannot be a statistical accident and can comfortably indicate the need for swifter removal from the aid programs. Not including that number might necessitate further justifications for why 12 percent is the acceptable level of inflation and not some higher percentage. Nor would it by itself explain why it should be considered acceptable for a program with results well above the studied and recommended level of <u>maximum</u> debt service on student loans should still be considered acceptable.

8 percent is a lender standard and the Department is a lender

As Sandy Baum and Saul Schwartz note in their discussion of the 8 percent standard and their perceived limitations of that metric:

> …they help the lender determine the maximum that an applicant can borrow without creating an excessive default risk. They do not reflect any notion of what is "affordable"; they determine what you can borrow rather than what you should borrow. Said differently, the 8% rule is a lenders' benchmark.[9]

But this limitation perfectly describes the reason for the Department to employ the 8 percent standard. In this interaction, the Department of Education is the lender. As such it needs to balance loan recipients and taxpayers, part of which is making determinations about the maximum level of indebtedness that is likely to generate problems in handling the debt. Were the Department to seek solely an affordability standard, then it very well might go to an even lower percentage. By contrast, for the Department to go beyond the 8 percent standard to solely one at 12 percent it would need to justify why its lender standard should go above and beyond what's already viewed as the maximum acceptable limit.

If anything, 8% is too high a percentage

As Baum and Schwartz note, the calculation for maximum debt service on student loans is actually the maximum recommended debt service for all non-housing debt. That's because the 8 percent figure

[9] http://www.cgsnet.org/ckfinder/userfiles/files/How_Much_Debt_is_Too_Much.pdf page 7.

appears to be derived from taking the overall debt-to-earnings ratio recommended by mortgage underwriters and subtracting from that amount the share that should go to housing. But that remaining amount should not be used solely for student loans, since families are likely to have other debt obligations for things like auto loans and credit cards.

In fact, though Baum and Schwartz do not ultimately endorse the 8 percent standard, they actually end up suggesting that low-income borrowers (with incomes well below where most gainful employment programs are) should have a debt-to-earnings rate of zero, while higher income borrowers should never go above 20 percent of discretionary income—the same standard used by the Department for the other debt-to-earnings measure. This described set of standards is actually far more rigorous than the one suggested in the NPRM, since it would result in any program that produces low incomes to have no debt service obligations and require all others to pass the discretionary debt-to-earnings test, which is a much higher bar.

By contrast, depending solely upon a 12 percent standard would be to set a level of acceptable debt well above all other recommended figures. For borrowers with no discretionary income it would mean that it is acceptable for impoverished individuals to devote even more dollars that should be going to bare essentials toward loan payments. And it would effectively crowd out the ability to carry any other forms of non-housing debt and still have a reasonable debt-to-earnings rate.

The combination of annual and discretionary measures addresses many complaints about the 8 percent standard

One critique raised of the 8 percent standard is that it may be unfair because borrowers may be able to support different levels of debt burdens. But what this concern fails to note is that such a problem tends to be raised with respect to higher-income borrowers, for whom a debt burden greater than 8 percent may be feasible. The rule, however, already acknowledges this issue through its inclusion of the discretionary debt-to-earnings rate. That figure creates a second test that allows for greater debt service levels for higher-income borrowers. By contrast, allowing higher annual debt-to-earnings rates is essentially a pass for greater indebtedness among very low-income borrowers.

Congressional intent argues for a threshold closer to 8 percent, if not lower

In the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), Congress lowered the percentage of income that can be spent on student loan payments through income-driven repayment plans to 10 percent starting July 1 of this year.[10] But this 10 percent is not of annual income. Rather, it is 10 percent of income remaining after taking adjusted gross income and subtracting from it an adjustment for the poverty level based upon the size of the borrowers family. Any borrower for whom their loan payments after this deduction are greater than 10 percent of the remaining amount would receive a reduction in monthly payments. This means that as an effective percentage of annual income, Congress is stating that a partial financial hardship can occur at debt service levels well below 8 percent. For example, consider a single borrower who makes $30,000. Taking out 150 percent of the poverty

[10] http://www.gpo.gov/fdsys/pkg/PLAW-111publ152/pdf/PLAW-111publ152.pdf page 53. The Obama Administration subsequently enacted Pay As You Earn through regulation, which applies a similar 10 percent limitation for some other borrowers.

level leaves $12,765, 10 percent of which is just $1,276.5. But that amount as a share of income is just 4 percent. If a borrower's payments exceeded this amount, she would have a partial financial hardship even though her debt service percentage is lower than 8 percent. In fact, a single borrower would have to make $86,175 in order to have her maximum debt payments under income-based repayment actually equal 8 percent of her annual income. Thus even at 8 percent a borrower can take on debt levels far beyond what Congress believes to be affordable, to say nothing of what would be allowed under a 12 percent standard.

Debt-to-earnings rates matter outside of the student loan space

The role of student loans in a debt-to-earnings rate is now more important than ever thanks to recent rules from the Consumer Financial Protection Bureau. These rules now set a bright-line standard for what's considered a qualified mortgage of 43 percent. [11] Though lenders are not prohibited from making mortgages for borrowers whose debt-to-income exceeds 43 percent, the legal protections and flexibilities are different for ones above this level.

What makes that 43 percent standard even more important is that it includes student loan payments. This means that every increase in the debt-to-income rate due to student loans is a direct reduction in the amount of other debt service that can be taken on in the mortgage context. It is thus a direct substitution effect. So if the Department of Education allows a higher percentage of debt to go to student loan payments, it could very well depress the amount of mortgage debt that same student could take on.

Working backwards from the 43 percent standard provides additional guidance of acceptable levels of student loan debt. The U.S. Department of Housing and Urban Development suggests that families who devote more than 30 percent of their income for housing are "cost burdened," suggesting that should be an effective ceiling on housing payments.[12] In thinking about the absolute worst case indebtedness then, that suggests no more than 13 percent of income should go to non-housing debts. A standard of 12 percent for student loan payments would thus crowd out anything but a tiny amount of other debt.

Additional earnings measurements are idealized and impractical

In an ideal world, the returns to a vocational program could be thought of as the difference in income earned versus alternative paths chosen. Unfortunately, there is no practical way to actually judge this process, which is rife with unprovable counterfactuals for all involved and too complicated to administer.

Consider, for example, a younger student who is not working before entering a program. It is possible to measure their earnings when they graduate, but is it a fair comparison to use their earnings prior to

[11] This figure is 2 percentage points higher the level of 41 percent that is commonly discussed as a limit used by underwriters.

[12] http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/

going into the program to do a return on investment calculation? If that person was in high school then they might have little to no earnings, whereas they could now be working full time. One alternative could be to see how the student's earnings compare to someone who never went to college, but is that the true counterfactual? What if the student had a 4.0 grade point average in high school? The student may have been choosing amongst either not going to college or picking amongst a number of different programs. Looking only at the no-college scenario ignores the potential value that could have been achieved by making other choices that might have paid off even better.

Working professionals present other challenges. If someone has been working in a job for several years, then it may be hard to determine whether changes in income should be attributed to the program versus pay increases that come with increased tenure and seniority. This would require making some choices about what drove earnings increases that would have to be made on an individual basis, despite the fact that there is no way to receive individual earnings from the Social Security Administration.

Input adjustment does not make sense in a minimum standards test

The goal of the gainful employment regulation is to establish the objective minimum acceptable standards that a program should meet to continue participating in the federal student aid programs. These are objective thresholds, not relative standards based on unacceptable levels of poor performance.

Input adjustments on the metrics would effectively turn what are supposed to be a set of bright line standards into ones that state it is acceptable for certain students to be in positions worse than what research suggests should be acceptable. And it provides no benefits for former students, who cannot use input-adjusted dollars to pay their student loans and stay out of default. A move away from real figures also muddies the waters on encouraging program improvement. When measured in actual, observable numbers, the amount a program needs to improve is clear and understandable. Input adjustment removes that benefit, with the result that a college could very well improve its raw results only to see its performance decline. And on top of that, input adjustment would require making a whole additional set of very complicated choices that would have to be justified.

In a system that was trying to draw differing lines for quality rather than just set minimal acceptable standards, then perhaps it might make some degree of sense to group colleges so they are being compared to ones with similar profiles. This ensures an apples-to-apples comparison and is something we have called for as sensible in thinking about a ratings system with multiple tiers of quality. But gainful employment is not a ratings system; it is a minimum quality standards regulation where such groupings are unnecessary. The thresholds chosen here are reflections of the minimum results that are tolerable for continued participation in the aid programs. Making input adjustments that result in it being acceptable to miss those standards undercuts the idea behind what the regulation is trying to tackle.

Macro-economic adjustment is unnecessary and infeasible

Because gainful employment is about minimal acceptable standards, making some kind of macroeconomic adjustment is also not necessary for the same reasons that input adjustment is not needed. The standards and thresholds chosen are ones that are trying to demonstrate a level of results that are not acceptable in any set of conditions. But beyond that, there are two additional reasons why macroeconomic adjustment is unnecessary and infeasible. First, a well-functioning career-training institution should be in constant contact and discussion with its local labor market, changing curricula and offerings to match needs and job openings. The institution itself should thus be constantly adjusting to local needs itself and the size of programs and ones being offered should reflect that work. In that light, the programs presented here should be the result of an ever-evolving response to local labor market demand. But this also means that in cases where an institution does not do that due diligence and is out of sync with local needs, some sort of adjustment might give them credit for not engaging in work that it should be doing.

There is, however, an even more basic and technical reason for why such adjustments are not feasible in any way that would reflect actual local labor market conditions. All colleges report their gainful employment data based upon OPEIDs. But unlike IPEDs identifiers, these do not uniquely represent a single campus. Nor do they necessarily even represent campuses only in one area. As a result, it's possible for data on a program to reflect students in radically different labor markets in different parts of the country. For example, Everest College has one campus that represents data for three locations in Michigan: Detroit, Dearborn, and Southfield, but also Austin, Texas. While the first three labor markets might be somewhat similar, conditions in Texas could be totally different. There is thus no sensible way to make adjustments that would deal with the combination of data across logical state and regional barriers.

668.414—certification requirements

As discussed at the top, programs that fail to obtain necessary approvals for graduates to obtain employment in their field could not possibly fulfill the requirement of providing gainful employment in their stated occupations. And the fact that they can do so today is a reflection of a loophole in federal law that must be addressed. While not perfect, the certification requirement partially fixes the existing disconnect that allows unapproved programs to still get access to federal student aid via their institutional accreditation. But several changes are needed to make the certification more meaningful.

Tie certification to where students are, not the institution

The proposed certification requirement would apply to the state where an institution is located and any other states in the surrounding metropolitan statistical region. But this requirement would not sufficiently protect students enrolled in distance education programs. For example, an online law school located in California may easily certify that it meets the requirements to practice law in California, even if most of its students come from other states that are thousands of miles away. In that case, such a certification would be meaningless as a protection mechanism. Even worse, it could mislead students into thinking that the program does have necessary approvals for their home state.

There are two possible solutions to this problem. One would be to require the certification to cover any states where the program enrolls a sizeable number of students. This sizeable number could be defined at 30, effectively saying it must enroll enough students that were it its own program it would be measured under gainful employment. Alternatively, this could be defined as the top five or 10 states. The set number of students is preferable since a large national provider might have a sizeable presence in many more states.

The second option would be to restrict this requirement to any program where a plurality of students attend via online coursework and live in another state. In those cases, the fact that the campus has a physical location is not particularly important since large numbers of students are not using it. In those cases, the institution should have to certify that it has the necessary approvals for where its students are. Reorienting the certification requirement to reflect actual student location would thus make it more meaningful as a protection tool.

One difficulty in a student-based certification requirement is that an institution may not be able to certify what states students may enroll from upfront. This could be addressed by requiring institutions to certify at the end of each year that they did not enroll anyone who was in a state where they could not sit for the relevant licensing tests.

Include all sub-campuses in any certification

Because program participation agreements are not always available, it is unclear at what level the certification would occur. But any certification should at the very least have to include the locations of any sub-campuses. This is especially true if the certification is done at the OPEID level, where a single identifier might include campuses in multiple states.

The University of Phoenix illustrates why including all the sub-campuses is necessary. Phoenix rolls up its data to one OPEID, but has campuses in 37 states plus the District of Columbia and Puerto Rico. Were the certification requirement to only apply to the Phoenix's headquarters it would exclude large numbers of campuses and students.

The certification requirement should include non-government certifications

In some cases the issue the certification requirement is addressing may not be a problem with state licensing but employer demands. This might mean that a student has to get certain certifications in order to get a job, even if it is not in a profession regulated by the state or a federal entity. In those cases, a certification based upon governmental demands will be insufficient. To address this, institutions should also have to certify that their programs provide students with access to certifications required by employers and an explanation of the different certification options available in that field, the benefits of each, and which one the institution's program has. This information should also be provided to students to help them understand the opportunities their program may or may not be providing.

Require student acknowledgement

In the ongoing regulations on state authorization, the Department proposed a requirement that institutions should have to obtain written (in paper or electronic form) acknowledgement from students that their program may not have necessary approvals or certifications. While a strong certification requirement should obviate the need for this provision, if the Department does not choose to broaden the certification requirement as suggested above, it should add in similar positive acknowledgements by students. For reference, the suggested regulatory text is included below.

(d) Notwithstanding paragraphs (a), (b), (c), and (e) of this section, an institution is not considered to be legally authorized for purposes of institutional eligibility for funding under the HEA with respect to programs offered in a State if those programs do not meet the educational, and as applicable, programmatic or institutional accreditation requirements for graduates of those programs to receive certification or sit for the licensure or certification examinations required in the State in the occupation for which the program is intended, unless the institution obtains written acknowledgement from each student in that State before enrollment that graduation from the program –

> (i) Will not fulfill educational, or as applicable, programmatic or institutional accreditation requirements for licensure, or to obtain licensure or certification in that State; and
>
> (ii) If applicable, that additional coursework, field experience, or other academic requirements must be completed to fulfill requirements to obtain licensure or certification in that State.

As an additional part of this certification, institutions should not be allowed to use the promise of possible future accreditation or approval as grounds for making such an acknowledgement seem less noticeable.

668.404—Calculating D/E Rates

The earlier comments on the gainful employment framework discuss the need for changes to the debt-to-earnings rates in order to adjust for programs with low average incomes. Rather than reprinting that entire section, it is under the comments for 668.403.

Use a weighted average of interest rates

The current proposed formula for debt-to-earnings rates would use an average of the federal student loan interest rate over the prior six years. But this measure makes no sense in the case of one-year certificate programs, where a student is extremely unlikely to have been enrolled in that program as long ago as six years prior. Therefore, much as the assumed repayment time varies by program length, so too should the interest rate.

The most sensible way to do this would be to take a weighted average of the actual interest rates on the included loans. Doing so better reflects the actual payments that borrowers have to make on their debts. It also means that shorter-term programs are not having inaccurate rates by virtue of a multi-year average. Finally, such a weighted average is fairer to programs because it could include the interest rate on Subsidized Stafford Loans, which for past cohorts would be lower than Unsubsidized Stafford Loans.

If an actual weighted average is not feasible for some reason, then the best approach would be to vary the look-back period for creating an average interest rate based upon the program length. This could be done by taking the number of years of the program plus one. The extra year is recommended because the debt-to-earnings rates include graduates from two years of data, so the interest rate would reflect the number of years they likely overlapped in the data, plus one other to reflect the older cohort of graduates. This would mean that a one-year certificate is a reflection of two-years of average rates, an associate degree is a reflection of three years, a bachelor's degree is five years, and so on.

If that does not work, then an alternative consideration could be to use the applicable interest rates for a period of time equal to 150 percent of the program length, rounded into whole years. This would produce the same number of years used for certificates and associate degrees but use six years for bachelor's degrees. Either solution would introduce the much needed acknowledgement that six years is too long for certificate programs.

Exclusions should match deferment standards

The current proposal would exclude students from the calculation if they go back to school, have military service, or meet other requirements. The idea of these exclusions is sensible. To not take these students out would unduly bias earnings results downward. But the current proposal also lacks any time limit around how long a student would have to be in one of these situations to receive an exclusion. That's potentially problematic, as someone who is in school for as little as one day could possibly have their year-long earnings not included.

A better way to address this problem would be to peg exclusions to students receiving in-school deferments the way it is currently done for military deferments. For in-school students in particular, this would ensure that they are actually back in school at a certain level of attendance intensity, not just that they tried something out for a day. Since in-school deferment is something that must be known for loan repayment purposes, this should be easy to determine for all borrowers with debt. It may be slightly more complicated for students who only received Title IV grant aid, but these individuals would have required additional reporting to implement this exclusion anyway.

Include any required expenses

The requirement to limit considered debt to solely tuition and fees and books and supplies ignores the reality that attending college has opportunity costs. For working students, the decision to attend full-time will likely require a substitution of debt for income to cover necessary expenses that earnings from work might have covered in the past. A blanket exclusion of these items legitimizes an unproven set of assertions about "over-borrowing." Moreover, it ignores the fact that institutions possess the ability to reduce borrowing on a case-by-case basis and just cannot do so categorically. Such provision should give them the ability to address any "over-borrowing" that is occurring.

That said, since the Department has repeatedly indicated that it is willing to limit debt, it should at the very least ensure that any required expenses are included. The current language likely does this, but adding the phrase "or any other required expense or cost," would cover situations where some expenses might somehow be excluded from the calculation.

Use a separate interest rate for private education loans

Attributing a weighted average of federal student loan interest rates to a borrowing amount that includes private loans almost certainly understates the interest rate on those non-federal debts. With the possible exception of graduate PLUS debt, private education loans are almost certainly going to carry a higher interest rate than federal loans. To address this concern, the Department should request institutions to provide documentation of the interest rate being charged on any private education loans that are affiliated with the school (including all forms of credit). For non-institution-based private education loans, the Secretary should conduct a survey of private student loan rates and include that rate in its weighted average.

Publish mean and median earnings data

The current calculation of debt-to-earnings rates always proposes to use median debts, but then the higher of mean or median earnings. While this kind of calculation is most beneficial to the institution, it also results in weird math where the numerator and denominator are not arrived at in consistent ways. Ideally, the median should always be the earnings figure reported. Choosing this level guarantees that the earnings data are a reflection of at least 50 percent of graduates and means that one outlier person does not throw off the whole calculation in either direction.

At the very least, if the Department is unwilling to apply consistent treatment of mean or median, it should clearly report both figures and indicate which is being used. This will make it easier to conduct analyses across programs.

668.14 Program Participation Agreement

Similar to the certification requirement, adding an approval process through the program participation agreement is a sensible and simple solution to an obvious set of problems. But there are a few suggested changes that should be made.

Require explanations for programs that are 25 percent longer or a higher credential level than normal

The current proposal to require explanations for programs that are 50 percent above the recommended level of clock hours seems overly generous. For example, this could mean that a certificate that is less than one-year would become over a year—an important distinction that could trigger a student taking on another year's worth of debt.

The current requirement also ignores another potential problem of up-credentialing. For example, there are some programs that may offer associate degrees in things like medical assisting, which never require anything more than a certificate, if that. Only focusing on clock hour length might thus ignore a proposal to offer programs at a higher level than necessary.

A few tweaks to the explanation requirement would account for these issues. First, any increase in clock hours beyond the typical level that results in extending the program over another award year should require an explanation. Second, any program that is offered at a higher credential level than typically necessary should also require an explanation. And when thinking about what drives the requirements, it should reflect not just governmental licensing needs but also the most common certifications in the field as demanded by major employers.

Consider the types of credentials added

One problem with career training programs in the past is an expansion into areas beyond their core competencies. For example, the University of Phoenix moved into the associate degree space with online offerings where students fare substantially worse than its older core business of bachelor's degrees and above. In approving program participation agreements, consideration should be given to not just whether the program is in the typical range of offerings the institution has but also whether it represents a new level of offering (either lower or higher).

Require transparency on approved programs

One difficulty with program participation agreements is that the public has no way of knowing what has been approved and the associated fees, lengths, and other key details. As part of the changes to the program participation agreement, the Department should make public all of the information on these agreements and publish in any easy to use database a list of all programs by institution, as well as their lengths, typical costs, and other key details.

668.405—Issuing and challenging D/E Rates

Take a figure skating judging approach to debt exclusions

The current proposal would throw out the highest debt for each student that does not match with the Social Security Administration. But there is no way to know for sure that the highest debt students are actually the ones that are not matching.

A better solution would be to treat the debt exclusion the same way judges handle figure skating. This would entail first throwing out the highest debt and then alternating between excluding the lowest and highest remaining debts. The approach still presumes first that the highest debt should be excluded, but distributes the exclusions more fairly.

In addition, the Department should consider what would happen if enough debts are considered that the median debt figure moves to $0. Would such a program be considered passing in such a circumstance even though it would have been evaluated prior to that exclusion?

668.410—consequences of GE Measures

Preserve proposed number of failures before ineligibility

A good accountability system must balance the needs of giving flexibility to show that unacceptable results are not one-off accidents without being so patient that problematic actors can hurt students for prolonged periods of time. The current proposal successfully balances those two aims. Programs that are so poor performing that they well exceed the maximum acceptable levels of indebtedness should not have more than two opportunities to fail before losing eligibility. This two failure requirement is similar to existing requirements around the 90/10 rule, which requires two consecutive failures, while actually being more lenient than the institutional cohort default rates, which provide for ineligibility after one year of rates above 40 percent.

Similarly, the debt-to-earnings zone provides greater failure tolerance than the existing cohort default rate, which removes eligibility after three consecutive years. Thinking of the debt-to-earnings rates in contrast to the existing institutional cohort default rates, thus suggests that the former is even more generous with its time, giving the most problematic actors at least one additional year before eligibility is lost, while those with unacceptable levels also get one more year than they would under cohort default rates.

Cap Title IV aid for programs after three straight years in the zone

It may be hard to cap Title IV aid for a program that fails the debt-to-earnings rates, since it would not have a lot of time left before it could lose eligibility with a second failure. But a program that has spent three straight years in the zone has shown an inability to improve over a much longer timeframe and should start to push the Department more toward protecting students. The best way to do this would be to restrict new Title IV aid for programs that have been in the zone for three straight years. This would minimize the number of students who might start a new program that then loses eligibility the next year. In other words, the tradeoff with being given more time to improve should be a limitation on Title IV aid in that final year, since it has shown an inability to use the added time to achieve better results for students.

Require a consumer-tested template for warnings

The warnings attached to gainful employment programs may be difficult to follow or handed out with a slew of other material. To address this concern, the Department should establish a consumer-tested required template for these disclosures that the institutions would have to use.

Require student acknowledgement of warnings

Institutions often send a lot of information to students, which can make it easy for important announcements to get lost in the shuffle. Therefore, much as students should be given greater warnings about lack of programmatic accreditation before they enroll (including a suggested student acknowledgement idea borrowing from proposed regulation on state authorization) the institution should have to obtain acknowledgement from each student of any provided warnings.

600.2—Definitions

Substantially similar programs should be more broadly defined

The current proposal would have restrictions on the ability of a program to re-establish an ineligible or voluntarily discontinued program based upon whether it is substantially similar to the one that used to be offered. But the current proposal for what constitutes substantially similar is not sufficiently broad enough, potentially allowing programs that are quite similar to still be included.

The biggest issue for this is the requirement that the program share not just the first four digits of a CIP code, but also the same credential level. But in its new definitions for credential levels, the Department separates out certificates into multiple types. This means that a discontinued certificate of less than a year could be easily reconstituted as a longer certificate program and not be considered substantially similar. Or perhaps even worse, a certificate program could be recreated as an associate degree program.

A better approach to this requirement would be to prohibit an institution from establishing a program with a similar CIP code, regardless of level. The one exception would be if the institution had previously offered multiple versions of the same program at different levels and the one it wants to establish is at a level that was not previously failing.

Substantially similar definition should consider regular changes to CIP codes

A second issue with the substantially similar definition is it presumes that CIP codes are static. But this is not the case. A small number of institutions can very easily create new CIP codes and they are also redefined every 10 years. A program that is voluntarily discontinued around the time CIP codes are redone could thus potentially get reclassified and stood up without the waiting period.

A better approach to this is to lean less heavily on CIP codes and instead put in place an approval process that would require any institution that had lost a program to ineligibility or voluntarily discontinued a failing or zone program to provide a description of new programs to be added, showing the courses required of the old offering versus the new one. While more in-depth, this requirement would be limited to those with a history of past problems and mean there would be no need to worry about potential issues with CIP classification.

668.413—Calculating, issuing, and challenging completion rates, withdrawal rates, repayments rates, median loan debt, and median earnings

Focus on amortization instead of dollar reduction for repayment rates

The suggested test for repayment rates is unnecessarily complicated and does not reflect the potentially uneven nature of student loan repayment and prepayment. Loans that are being repaid successfully over time should be reducing their balance by much more than $1 each year, making the proposed test an insufficient consideration of success. At the same time, someone might make a substantial prepayment in a given year, leaving them with a lower loan balance on which they make fewer payments in a successive year and possibly failing a repayment test.

A better approach to the repayment rate is to consider it as an amortization test—if the borrower were paying down the loans in a reasonable amount of time, what should the balance be at a given date and how does what they owe compare to that amount? The advantage of this test is it allows for irregular repayments at any point in time prior to the measurement date.

It also makes it possible to express the rate in any number of ways, such as:

- The number of years borrowers are going to take to pay off loans—one could calculate based upon the amount remaining at a point in time how long it would take to pay off loans in equal installments with the known interest rate
- The percentage of borrowers on track to pay off their loans within a stated number of years—could calculate based upon balances what percent of borrowers pass a 10-year amortization test, what percent pass a 15-year amortization test, etc.

- Calculate a pooled measure and an individual one—the loans could also be pooled to see if the entire portfolio for a given program is being reduced at a meaningful rate. This calculation thus gives flexibility to think about results in multiple ways.

Clarify the enrollment cohort

The current requirements around an enrollment cohort may not accurately present a completion rate for students because the denominator appears to be all students enrolled in a GE program in an award year. For a certificate of one-year or less, this cohort should be the same as the denominator of a typical completion rate, but for multi-year programs, this would make it look like students who are in the second or third year of their studies as dropouts. In this light, the better denominator would be if the enrollment cohort were set at a time in the past equal to 100 percent of the program length. This would be one year in the case of certificates, two years for associate degrees, etc.

Similar issues arise for the withdrawal rates. Are these supposed to be a measure of how much churn might have occurred within a single year or essentially a measure of how many people neither finished nor are still enrolled? If the desire is for the single-year withdrawal rate, then the better test would be how many students who enrolled at any point in the award year are still there at the end of the award year and did not finish? This would be the same formula are currently used in 668.16(l).

Match in-school exclusions to deferments

As suggested earlier, the exclusion for in-school deferment on a repayment rate should mirror the requirements for an in-school loan deferment.

Clarify that medians are for Title IV students

The discussion of mean and median debt amounts appear to peg off of earlier definitions for how to calculate these items. But these are the mean and median debt amounts for the percentage of students receiving Title IV aid. The Department should clarify that these are only for Title IV students. It should also consider reporting the percentage of all students that received Title IV aid and the percentage of all students that received student loans.

668.407—Calculating pCDR

Establish a minimum n-size

While current statutory requirements for the program cohort default rate may not lay out a minimum cohort size, failing to establish one could create confusion if results for only one or two students were reported. For this reason, the Department should consider adopting a minimum n-size of 30 borrowers, either obtained in a single year or through a three-year combination of students. Programs with fewer than 30 borrowers should not face accountability, the same way they do not on the debt-to-earnings rates.

668.412—Disclosure requirements for GE programs

Disclose in which states a potential student could receive licensure

The current disclosure requirements propose indicating whether the program has necessary accreditation to obtain licensure in the occupation for which they are being trained. But this requirement could mislead students, especially if the institution offers distance education courses that are only approved in some states. To correct this problem, the disclosure template should indicate what states have the necessary approvals or provide this information in close quarters to the disclosure requirement, such as a separate click-through page. This requirement would follow recommendations discussed in the certification section.

Clarify that borrowing rates are of all students

Due to restrictions, the loan figures used in the debt-to-earnings rates would only be for students who received Title IV aid of some sort. But the disclosure requirements suggest they would be for all students. The Department should clarify that this is in fact the case by noting that these disclosure requirements apply regardless of whether students received Title IV aid or not.